



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C. 20460

APR - 1 1999

OFFICE OF
CIVIL RIGHTS

RETURN RECEIPT REQUESTED

IN REPLY REFER TO:

(b) (6) Privacy

EPA File No.
9R-98-R5

Romulus, MI 48174

RE: REJECTION OF COMPLAINT

Dear (b) (6) Privacy:

By letter dated June 27, 1998 you requested the Environmental Protection Agency (EPA) to investigate allegations of violations of Title VI of the Civil Rights Act of 1964, as amended, and the EPA's implementing regulations at 40 C.F.R. Part 7. Specifically, your complaint alleged that the Michigan Department of Environmental Quality's (MDEQ) final issuance of a Prevention of Significant Deterioration (PSD) permit No. 190-95 on November 24, 1997 for the modification of an incinerator by Central Wayne Energy Recovery Limited Partnership (CWERLP) in Dearborn Heights, Michigan results in a discriminatory effect on African-Americans residents of Inkster, Michigan.


Under Title VI of the Civil Rights Act of 1964, a recipient of federal financial assistance may not discriminate on the basis of race, color, or national origin. Pursuant to EPA's Title VI administrative regulations, the Office of Civil Rights (OCR) conducts a preliminary review of Title VI complaints for acceptance, rejection, or referral. 40 C.F.R. § 7.120(d)(1). A complaint should meet jurisdictional requirements as described in EPA's Title VI regulations and the criteria outlined in EPA's *Interim Guidance for Investigating Title VI Administrative Complaints Challenging Permits* (Interim Guidance) issued on February 4, 1998. First, it must be in writing, should be signed, and provide an avenue for contact. Second, it must describe alleged discriminatory acts that, if proven true, may violate the EPA's Title VI regulations. Third, it must be timely filed. Under EPA's Title VI regulations a complaint must be filed within 180 calendar days of the alleged discriminatory act. 40 C.F.R. § 7.120 (b)(2). Fourth, it should identify an EPA recipient that allegedly committed a discriminatory act.

Based on OCR's review, this complaint cannot be accepted for investigation. EPA's Title VI regulations establish a 180 day time limit after the date of alleged discriminatory act for the filing of a complaint. 40 C.F.R. § 7.120(b)(2). As stated in the Interim Guidance, EPA interprets 40 C.F.R. § 7.120 (b) to mean that complaints alleging discriminatory effects resulting

from issuance of a permit must be filed with OCR within 180 calendar days of the issuance of the final permit. The PSD permit was issued by MDEQ on November 24, 1997 and this complaint was filed 215 days later on June 27, 1998. The Interim Guidance contemplates the possibility of a waiver of the time limit by OCR for good cause if a complaint is filed 60 days after the resolution of an administrative appeal process. *Interim Guidance* at 6. Although a petition for review was filed with the Environmental Appeals Board (EAB) in this instance, the administrative appeal process was resolved by the EAB on March 26, 1998, which is more than 60 days before the June 27th filing date.

Accordingly, OCR cannot accept your complaint. If you have any questions regarding this matter, Michael Mattheisen of my staff can be reached at (202) 260-4587, or by mail at the above address.

Sincerely,


Ann E. Goode
Director

Enclosure(s)

cc: Russell J. Harding, Director
Michigan Department of Environmental Quality (MDEQ)

Gary S. Guzy, Acting General Counsel
Office of General Counsel (MC 2310)

Robert Perciasepe, Assistant Administrator
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